UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5

RADIO FREE ASIA

Employer

and Case 5-RC-15565

WASHINGTON/BALTIMORE
NEWSPAPER GUILD, LOCAL 32035

Petitioner

SUPPLEMENTAL DECISION AND CERTIFICATION OF REPRESENTATIVE

Pursuant to a Decision and Direction of Election[1] issued by the undersigned on May 7, 2003,[2] a secret mail and manual ballot election was conducted under my supervision and tally of ballots issued on June 20, with the following results:

Approximate number of eligible voters	125
Void ballots	1
Votes cast for Petitioner	77
Votes cast against participating labor organization	37
Valid votes counted	114
Challenged ballots	0
Valid votes counted plus challenged ballots	114

[1] The unit is: "All full-time and regular part-time language service employees, including broadcasters, senior broadcasters, research specialists, administrative assistants, production coordinators and production assistants employed by the Employer in Washington, D.C., but excluding all senior editors, editorial department employees, contractors, professional employees, managers, guards, and supervisors as defined by the Act." The eligibility period is the payroll period ending April 26, 2003.

[2] Unless otherwise noted, all dates are in 2003.

Challenges were not sufficient in number to affect the result of the election. The Employer filed timely objections to conduct of the election and conduct affecting the results of the election on June 27.[3]

THE OBJECTIONS

OBJECTION 1

> The decision to refuse to accommodate Radio Free Asia employees who have only rudimentary English skills resulted in the inability of those employees to intelligently participate in the election.

The Employer supports Objection 1 with its assertion that, according to Vice President and Executive Editor Donald Southerland and certain unnamed directors of its language service groups, at least nineteen bargaining unit employees do not understand English sufficiently to comprehend the English language election materials. The Employer contends that documents written in English and distributed to employees by the Employer are discussed between these directors and the employees in the employees' native languages. The Employer further contends these documents are also discussed among the employees themselves in their native languages. In addition, the Employer argues only one of the three mail ballots was effectively cast, raising an inference the two employees did not understand the English-only instructions.

Following the filing of the petition in this matter on April 21, the parties reached stipulations covering all issues that could have been litigated with the exception of the Employer's request for interpreters at the polling place and the translation of the Board's Notice of Election and election ballots. On May 1, a representation hearing was held.

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[3] The petition was filed on April 21. I will consider on its merits only that alleged interference which occurred during the critical period which begins on and includes the date of the filing of the petition and extends through the election. Goodyear Tire and Rubber Company, 138 NLRB 453.

The hearing often permitted the parties to put on evidence regarding their necessity of election site interpreters and translation of election documents, solely to assist me in making an administrative decision regarding these matters. I issued a Decision and Direction of Election on May 7, in which I advised the parties that the foreign language issues would be addressed in a subsequent election arrangements letter.

In my letter to the parties dated May 9, attached hereto as Appendix A, I concluded for the reasons set forth therein that the Employer failed to establish a need for the requested translations and interpreters.[4] Accordingly, the request was denied. On May 21, the Employer filed a Request for Review of my determination. By Order dated May 28, the Board denied the Employer's Request for Review.

The Employer has presented no new evidence in support of its objection with the exception of its contention that the fact two of the three mail ballots were not properly cast indicates that the employees did not understand the English-only instructions. Of these two ballots, one was not returned and the other was voided on the ground that it was not properly prepared. The Employer did not proffer any witnesses, affidavits, or other objective evidence to establish that an inability of the employees to understand the English-only instructions caused the failure of either mail ballot to be properly cast. Indeed, the mere fact that a mail ballot was not returned does not establish that the employee did not understand the instruction; he or she may have simply decided not to vote. For the reasons stated in my May 9, letter, and since the Employer presented only conclusory evidence in support of its objection, Objection 1 is overruled.

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[4] As noted therein, the Employer requested interpreters for, and translation of Notices and ballots into, nine different languages: Burmese; Cambodian; Cantonese; Korean; Laotian; Mandarin; Tibetian; Uyghar; and Vietnamese.

OBJECTION 2

> Local 32035, Washington-Baltimore Newspaper Guild ("the Union") with and by its agents interfered with the free choice of representatives by the repeated defacement of the posted election notice.

The Employer alleges that despite its constant efforts to monitor the Notices of Election, unnamed Union officials and/or its agents and supporters repeatedly defaced the Notices by placing an "X" in the "Yes" box on the sample ballot. The Employer contends as a result of this conduct, the Board's neutrality in the election could not be fully understood by all bargaining unit employees, thereby compromising the election. The Employer further contends that the impact of this alleged defacement was significant because of the English language difficulties of a significant portion of the electorate.

The Employer did not submit any of the allegedly defaced Notices in support of this objection, nor did it provide any witnesses or other objective evidence to establish that the Union and/or its agents were responsible for, or in any way sanctioned, the alleged defacement.

Given the total lack of evidence Petitioner was responsible for the defacement and assuming the Notices were defaced the Board has held that anonymous third-party defacement of a Notice is not sufficient to set aside an election. Sugar Food Inc., 298 NLRB 628 (1990).

Even assuming, arguendo, Petitioner was responsible for the defacement, the Board addressed this issue in Brookville Healthcare Center, 312 NLRB 594 (1993). In that case, the Board overruled objections to an election filed by an intervenor which alleged that several days prior to the election, the employer caused a sample ballot on a

Notice of Election to be marked and displayed indicating the Board's and the employer's support for the petitioner. In refusing to set aside the election, the Board found that the preprinted language contained on the Notice of Election, which specifically disavows Board participation or involvement in any defacement and asserts its neutrality in the election process, was sufficient to preclude a reasonable impression that the Board favored or endorsed any choice in the election, whether or not an "X" appeared on the sample ballot.[5] In reaching this decision, the Board held that the analysis of cases involving the defacement of the Notice of Election set forth in SDC Investment, Inc., 274 NLRB 556 (1985), is no longer required.[6] See also Wells Aluminum Corp., 319 NLRB 798, fn. 2 (1995).

In light of my decision on Objection 1, there is no reason to believe the Employees did not understand the specific language in the notice disavowing Board participation in any defacement, and specifically asserting the Board's neutrality in the election. Consequently, based on Brookville and its progeny, I overrule Objection 2.

SUMMARY

The Employer's objections are overruled in their entirety. Accordingly, I issue the following Certification of Representative.

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[5] The Notice of Election was revised in 1993 and specifically states, in large, bold lettering:

> WARNING: THIS IS THE ONLY OFFICIAL NOTICE OF THIS ELECTION AND MUST NOT BE DEFACED BY ANYONE. ANY MARKINGS THAT YOU MAY SEE ON ANY SAMPLE BALLOT OR ANYWHERE ON THIS NOTICE HAVE BEEN MADE BY SOMEONE OTHER THAN THE NATIONAL LABOR RELATIONS BOARD, AND HAVE NOT BEEN PUT THERE BY THE NATIONAL LABOR RELATIONS BOARD. THE NATIONAL LABOR RELATIONS BOARD IS AN AGENCY OF THE UNITED STATES GOVERNMENT, AND DOES NOT ENDORSE ANY CHOICE IN THE ELECTION.

[6] In SDC Investments, the Board found it was appropriate to set aside elections where official Board documents were altered by the prevailing party in such a way as to lead employees to believe that the Board endorsed that party.

CERTIFICATION OF REPRESENTATIVE

IT IS HEREBY CERTIFIED that a majority of the valid ballots has been cast for the Washington/Baltimore Newspaper Guild, Local 32035, and that said Union is the exclusive representative of all employees in the unit involved herein, within the meaning of Section 9(a) of the National Labor Relations Act, as amended.

Dated at Baltimore, Maryland this 16th day of July 2003.

(SEAL) WAYNE R. GOLD

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Wayne R. Gold, Regional Director
National Labor Relations Board, Region 5
Appraiser's Store Building
103 South Gay Street, 8th Floor
Baltimore, Maryland 21202

Under the provisions of Section 102.69 of the Board's rules and Regulations, a request for review of this Supplemental Decision, if filed, must be filed with the Board in Washington, DC. Pursuant to Section 102.69(g) of the Board's Rules, documentary evidence, including affidavits, which a party has timely submitted to the Regional Director in support of challenges and which are not included in the Supplemental Decision, are not a part of the record before the Board. Failure to append to the submission to the Board copies of evidence timely submitted to the Regional Director and not included in the Supplemental Decision shall preclude a party from relying upon that evidence in any subsequent related unfair labor practice proceeding. The request for review must be received by the Board in Washington by July 30, 2003.